



ENVIRONMENTAL PROTECTION AGENCY
[FRL-9615-8]
Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address lawsuits filed by EnerNOC, Inc., EnergyConnect, Inc., CPower, Inc., and Innoventive Power, LLC ("Petitioners") in the United States Court of Appeals for the District of Columbia Circuit: EnerNOC, et al v. EPA, No. 10-1090 (D.C. Cir.) and EnerNOC, et al v. EPA, No. 10-1336 (D.C. Cir.). Petitioners filed for review of two EPA rulemakings that revised the National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (the RICE NESHAP). Under the terms of the proposed settlement agreement, by April 20, 2012, the Agency will sign a notice of proposed rulemaking that includes a proposal to revise the RICE NESHAP and the stationary internal combustion engine new source performance standards (ICE NSPS) to allow owners and operators of emergency stationary internal combustion engines to operate emergency stationary internal combustion engines in emergency conditions, as defined in those regulations, as part of an emergency demand response program for 60 hours per year or the minimum hours required by Independent System Operator tariff, whichever is less. The notice of proposed rulemaking may also allow for more hours of operation. In addition, under the terms of the proposed settlement agreement, by December 14, 2012, the Administrator of EPA will sign a final action on this proposal, which may include signature of a final rule by the Administrator. If EPA promulgates in

final form an amendment to the RICE NESHAP and ICE NSPS that includes changes that are substantially the same substance as that set forth in the settlement agreement, then Petitioners shall promptly file a stipulation of dismissal of Nos. 10-1090 and 10-1336.

DATES: Written comments on the proposed settlement agreement must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION DATE].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2011-1030, online at www.regulations.gov (EPA's preferred method); by e-mail to oei.docket@epa.gov; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Michael Horowitz, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-5583; fax number (202) 564-5603; email address: horowitz.michael@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed settlement agreement.

This proposed settlement agreement would potentially resolve a petition for judicial review filed by Petitioners for review of two rulemakings revising the National

Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (the RICE NESHAP), 75 FR 9648 (March 3, 2010) and 75 FR 51570 (August 20, 2010). The RICE NESHAP allows emergency engines to operate for 15 hours annually as part of a demand response program if the regional transmission organization or equivalent balancing authority and transmission operator has determined that there are emergency conditions that would lead to a potential electrical blackout, such as unusually low frequency, equipment overload, capacity or energy deficiency, or unacceptable voltage level. RICE would not meet the definition of emergency engine if they operated more than fifteen hours in such circumstances.

Petitioners filed petitions for review and reconsideration indicating that 15 hours is insufficient to ensure that emergency engines can be relied upon for dispatch under emergency demand response programs. The petition for reconsideration provided significant evidence that the NESHAP should be revised to allow owners and operator of emergency engines to operate for 60 hours per year or the minimum hours required by Independent System Operator tariff, whichever is less, as part of an emergency demand response program.

Under the terms of the proposed settlement agreement, EPA states that it anticipates that, by April 20, 2012, the Agency will sign a notice of proposed rulemaking that includes a proposal to revise the RICE NESHAP and, for consistency, the ICE NSPS to allow owners and operators of emergency stationary internal combustion engines to operate emergency stationary internal combustion engines in emergency conditions, as defined in those regulations, as part of an emergency demand response program for 60 hours per year or the minimum hours required by Independent System Operator tariff,

whichever is less. The notice of proposed rulemaking may also allow for more hours of operation. In addition, under the terms of the proposed settlement agreement, by December 14, 2012, the Administrator of EPA will sign a final action on this proposal, which may include signature of a final rule by the Administrator. Under the proposed settlement agreement, if EPA fails to sign the proposal by April 20, 2012, or to take final action on the proposal by December 14, 2012, Petitioners may move the Court to lift the order staying proceedings and establish a briefing schedule. Petitioners shall have no further remedy under the agreement.

Under the proposed settlement agreement, if the relevant provisions of the final rule are in substantial conformance with the revisions in the proposed agreement, then Petitioners agree to dismiss the petition for review.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional information about commenting on the proposed settlement agreement.

A. How Can I Get A Copy Of the Settlement Agreement?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2011-1030) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use the www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket

materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period.

Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA’s preferred method for receiving comments. The electronic public docket system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA’s electronic public docket, EPA’s electronic mail (e-mail) system is not an “anonymous access” system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address

is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 28, 2011.

Kevin McLean,
Acting Associate General Counsel.

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